

Department of Veterans Affairs

§ 21.1029

issued to the veteran setting forth the reasons for the decision, and the evidence upon which it is based. The veteran will be informed of his or her appellate rights and right of representation. (For information concerning the conduct of the hearing see § 3.103 (c) and (d) of this chapter).

(4) When a reduction of subsistence allowance is found to be warranted following consideration of any additional evidence submitted, the effective date of the reduction or discontinuance shall be as specified under the provisions of § 21.324 of this part.

(Authority: 38 U.S.C. 5112, 5113)

[54 FR 40872, Oct. 4, 1989]

ACCOUNTABILITY

§ 21.430 Accountability for authorization and payment of training and rehabilitation services.

(a) *General.* VA shall maintain policies and procedures which provide accountability in the authorization and payment of program costs for training and rehabilitation services. The procedures established under this section are applicable to all program costs except subsistence allowance (or the optional allowance at Chapter 34 rates). Policies and procedures governing payment of subsistence allowance are governed by §§ 21.260 through 21.276, and §§ 21.320 through 21.334.

(b) *Determining necessary costs for training and rehabilitation services.* The estimates of program costs during a calendar year or lesser period shall be based upon the services necessary to carry out the veteran's rehabilitation plan during that period (§§ 21.80 through 21.98). The estimates will be developed by the VBA case manager. If additional approval is required, the VBA case manager shall secure such additional approval prior to authorization of services.

(c) *Vocational Rehabilitation and Counseling (VR&C) Officer's review of program costs.* The VR&C Officer will review the program costs for the services in paragraphs (c)(1) through (c)(3) of this section if the case manager's program cost estimate for a calendar year exceeds \$25,000. The VR&C Officer may not delegate this responsibility. The case manager will neither sign a

rehabilitation plan nor authorize expenditures before the VR&C Officer approves the program costs. The services subject to this review are:

(1) Providing supplies to help establish a small business;

(2) A period of extended evaluation; or

(3) A program of independent living services.

(Authority: 38 U.S.C. 3115(b)(4))

[49 FR 40814, Oct. 18, 1984, as amended at 51 FR 45767, Dec. 22, 1986; 55 FR 25975, June 26, 1990; 62 FR 17710, Apr. 11, 1997]

CROSS-REFERENCES: See § 21.156. Other incidental goods and services. § 21.258. Special assistance for veterans in self-employment.

Subpart B—Claims and Applications for Educational Assistance

AUTHORITY: 38 U.S.C. 501(a), ch. 51, unless otherwise noted.

EDITORIAL NOTE: The regulations formerly appearing under this subpart were revoked at 30 FR 14103, Nov. 9, 1965. That order provided in part, "these regulations remain in force insofar as they are pertinent to any problems, appeals, litigation, or determinations of liability of educational institutions or training establishments for overpayments under 38 U.S.C. 1666."

CLAIMS

§ 21.1029 Definitions.

These definitions apply to this subpart, and to subparts C, D, G, H, K, and L of this part.

(a) *Abandoned claim.* A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and—

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

(Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The *date of claim* is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by § 21.1032, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 5103)

(c) *Formal claim.* A claim is a *formal claim* when the claimant (or his or her authorized representative) files the claim with VA, and—

- (1) The claim is a claim for—
 - (i) Educational assistance;
 - (ii) An increase in educational assistance; or
 - (iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(d) *Informal claim.* (1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term *informal claim* means—

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates

a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (c)(1)(i) of this section that is filed in a document other than in the prescribed form.

(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term *informal claim* means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved school is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a), 5102, 5901)

(e) *VA.* The term *VA* means the United States Department of Veterans Affairs.

(Authority: 38 U.S.C. 301)

[64 FR 23770, May 4, 1999]

§ 21.1030 Claims.

An individual must file a formal claim for educational assistance for pursuit of a program of education, indicating the proposed place of training, the school or training establishment, the objective of the program of education, and such other information as the Secretary may require. A servicemember also must consult with